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The Changing Needs of the Workplace: Looking to State Statutory Expansions for Guidance on FMLA Reform

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I. Introduction

A Colorado Congresswoman first introduced the Parental and Medical Leave Act to the Senate on April 17, 1985 to establish a national leave policy for working parents that would allow them protected leaves of absence due to childbirth, adoption, and caring for their infants or seriously ill children.¹ However, Congress never officially enacted the Parental and Medical Leave Act and vetoed it two times by the first Bush administration.² It was not until the Clinton administration that Congress passed the Family and Medical Leave Act (“FMLA”) in 1993, with the purpose of balancing the demands of the workplace with the needs of the family.³

Through its implementation, the FMLA sought to provide employees with reasonable leave to address serious medical conditions for themselves or family members, intending to promote financial security for families throughout the country.⁴ The FMLA also sought to ensure the right to be free from gender-based discrimination in the workplace, including employer actions that discriminated on the basis of gender, and preconceived notions that assumed women would always be the primary care givers in the family.⁵ Through its enactment, Congress addressed notions that discredited men’s roles in the home and abridged women’s roles in the workplace.⁶

When the FMLA passed, certain states expanded the FMLA’s provisions so more employees could be protected. Other states already had preexisting family and medical leave

¹ Parental and Disability Leave Act of 1985, H.R. 2020, 99th Congress, 131 Cong. Rec. 8318 (April 17, 1985).

² Nancy R. Daspit, *Comments: The Family and Medical Leave Act of 1993: A Great Idea but a “Rube Goldberg” Solution?*, 43 EMORY L.J. 1351, 1355 (1994).

³ 29 U.S.C.S. § 2601(b)(1)(i) (2015).

⁴ *Id.*

⁵ *Nev. Dep’t of Human Res. v. Hibbs*, 538 U.S. 721, 730-31 (2003) (“this and other differential leave policies were not attributable to any differential physical needs of men and women, but rather to the pervasive sex-role stereotype that caring for family members is women’s work.”).

⁶ *Id.* at 731.

state laws.⁷ States like Florida introduced domestic violence provisions,⁸ and states like Vermont expanded the FMLA to allow parents to take unpaid leave to attend their children's routine medical visits.⁹ This paper argues that the FMLA should be amended to adopt provisions similar to Florida's domestic violence provision and Vermont's provision allowing for routine medical visits.

II. Recommendations

Congress enacted the FMLA in February of 1993, nearly eight years after it was first introduced by Colorado Congresswoman Patricia Schroeder. At the time, proponents of the FMLA believed it was long overdue, especially when several European countries had already advanced to offering paid maternity and paternity leave.¹⁰ At the time, these changes were steps in the right direction, and a way to bring the concepts of both family life and work life into the political conversation. Now, after more than 20 years, these provisions need to be adjusted and expanded to include the changing needs of the family today.

Currently, families are continuing to see the limitations of their workplace leave protections afforded by the FMLA. While the advancements in the 1990's were considerably more progressive, these ideas need to adapt to the current economic reality. In 2015, women comprised 57% of the workforce.¹¹ Of those women, 70% were mothers with children under the age of 18.¹² According to the Centers for Disease Control and Prevention, nearly 22% of women

⁷ *Id.*

⁸ Fla. Stat. § 741.313 (2015).

⁹ Vt. Stat. Ann. Tit. 21 § 471(4)(2015).

¹⁰ Stephen A. Mazurak, *Comparative Labor and Employment Law and the American Labor Lawyer*, 70 U. DET. MERCY L. REV. 531, 556-57 (1993)(stating that most of the European Community countries provide paid maternity leave, while some provide a limited paid paternity benefit).

¹¹ *Latest Annual Data*, LABOR FORCE PARTICIPATION RATE BY SEX, RACE AND HISPANIC ETHNICITY 2015 ANNUAL AVERAGES AND 2024 PROJECTIONS, https://www.dol.gov/wb/stats/latest_annual_data.htm#labor (last visited Mar. 26, 2017) [hereinafter Labor Force Participation].

¹² *Id.*

have experienced severe physical violence by an intimate partner at some point in their lives.¹³

Despite these statistics, many women and families still cannot take leave after experiencing domestic violence. Others cannot take off for routine medical visits. As such, the FMLA is excluding some of the more vulnerable populations from its protections.

The FMLA should provide coverage to domestic violence victims and their families, as these individuals should not have to fear losing their jobs to seek support and safety. Further, the FMLA should allot designated time off for routine medical visits. With more women in the workforce, there are fewer adults in the home to take children to their primary care practitioners. In the long run, expanding the FMLA to cover routine medical visits could prevent more serious health conditions from occurring, which would benefit both the employee and the employer in the future. Thus, in this article, I will argue for two pressing realities that need to be addressed by the FMLA: leave for domestic violence victims and leave for routine medical visits.

III. General Background on the FMLA

A. Purpose

When enacted, the FMLA provided new legal accommodations for families to care for themselves and other family members who had serious health conditions that prevented them from working on a temporary basis.¹⁴ Through its enactment, Congress sought to specifically address the needs of the family, bringing the concepts of work-life balance and temporary family care into the legal limelight.¹⁵ No longer would family or sick leave be discretionary for states,

¹³ *Intimate Partner Violence Surveillance*, UNIFORM DEFINITIONS AND RECOMMENDED DATA ELEMENTS, <https://www.cdc.gov/violenceprevention/pdf/intimatepartnerviolence.pdf>. (last visited Mar. 26, 2017) [hereinafter *Intimate Partner Surveillance*].

¹⁴ § 2601(a) (2015).

¹⁵ Daspit, *supra* note 2 at 1354.

but a federal requirement for states to uphold.¹⁶ Congress also assured that the FMLA would not circumvent or be construed to supersede any state law that provided more family or medical leave rights.¹⁷ Rather, through the FMLA's enactment, Congress would uphold the concepts of family and work-life balance at a national level, allowing states to expand on these rights if they wanted.¹⁸

B. Eligibility

In order to be eligible for the FMLA, an employee must be employed for at least a 12-month period by an employer who has 50 or more employees.¹⁹ The employee requesting FMLA leave may be a veteran, a person with a serious health condition, or be a parent or spouse of someone with a serious health condition.²⁰ The statute defines a "serious health condition" to mean any illness, impairment, physical, or mental condition that requires continued treatment by a health care provider.²¹ Eligible employees are entitled to a total of 12 weeks of leave during a 12-month period for reasons including the birth of a son or daughter, for the purpose of adopting or fostering a child, or in order to care for the employee's spouse, child, or parent.²²

Employees who are family members and caretakers of a service member, including a spouse, son, daughter, parent, or the next of kin, may be eligible for a total of 26 work weeks of leave during a 12-month period.²³ Further, under the FMLA, an employer does not have to provide paid leave to the employee for the entirety of the leave period.²⁴ However, the FMLA does protect an employee in the case that an employer fails to adhere to any of FMLA provisions

¹⁶ 29 U.S.C.S. § 2651 (2015).

¹⁷ *Id.* at § 2651(b).

¹⁸ *Id.*

¹⁹ 29 U.S.C.S. § 2611(2)(A)(i) (2015).

²⁰ *Id.* at § 2612(a)(1) (2015).

²¹ 29 C.F.R. 825.113 (2015).

²² *Id.*

²³ 29 U.S.C.S. § 2612(a)(3).

²⁴ *Id.* at § 2612(d)(1).

by allowing an employee to create a right of action to seek equitable relief and monetary damages against the employer.²⁵

The FMLA also permits for an employee to recover against a State, as the Supreme Court in *Nevada Department of Human Resources v. Hibbs* found when it held that Congress could revoke the States' Eleventh Amendment immunity from suit if it found that the State had made it "unmistakably clear" that the language of a state statute showed the state's intent to repeal federal legislation.²⁶

C. Deficiencies in the FMLA's Coverage

One of the criticisms of the FMLA is that it inevitably excludes some of the most susceptible populations from its provisions, such as women, minorities,²⁷ and the indigent.²⁸ While the FMLA began with the intention of meeting the needs of working families by providing them with economic stability, its provisions are currently excluding those with little financial means.²⁹ Further, the FMLA's practical consequences look very different from the statute's legislative intent.³⁰ According to the Department of Labor, the FMLA excludes 41% of Americans, 89% of private employers, and many low-income earners who, while protected, cannot afford to take the unpaid leave that they are provided.³¹

The low number of covered individuals demonstrates the need for increased and revised federal FMLA expansions; expansions that need to consider both the interests of the employer as

²⁵ *Id.*

²⁶ *Nev. Dep't of Human Res.*, 538 U.S. at 959.

²⁷ *Use of the FMLA*, DEMOGRAPHIC CHARACTERISTICS OF LEAVE-TAKERS BY ELIGIBILITY STATUS: 2000 SURVEY, <http://www.dol.gov/whd/fmla/chapter3.pdf>. (last visited Jan. 12, 2016) [hereinafter *Demographic Characteristics*].

²⁸ *Use of the FMLA*, COVERAGE AND ELIGIBILITY OF LEAVE-TAKERS, <http://www.dol.gov/whd/fmla/chapter3.pdf>. (last visited Jan. 12, 2016) [hereinafter *Coverage*].

²⁹ *Demographic Characteristics*, *supra* note 27.

³⁰ *Coverage*, *supra* note 28.

³¹ *Id.*

well as the interests of underrepresented groups.³² Certain provisions that the FMLA does not provide for include: coverage for employees with less than 50 employees in a 75-mile radius, specific coverage for the 907,000 annual victims of domestic violence,³³ and coverage for family members needing to request leave because of a child's routine medical visits.

Under the FMLA, an employee has the right to paid or unpaid leave for a medical necessity if he or she works for an employer who employs at least 50 employees within a 75-mile radius.³⁴ When taking permitted leave, an employer may require that the employee take the leave from his or her vacation time.³⁵ In order to qualify, an employee must also be employed by the employer for at least a 12-month period and have worked 1,250 hours.³⁶

Because of these requirements, some employees, including woman workers who work in offices with less than 50 employees, cannot afford to take unpaid leave. Some of these women must end up choosing between working through their pregnancy or losing their jobs.³⁷ In *Thomas v. Pearl Vision*, the Seventh Circuit found that a woman optometrist was eligible for FMLA leave only because of the employer's work policy provided for it.³⁸ Had her employer's policy not addressed the issue, she would have been excluded under the FMLA because the employer had less than 50 employees within a 75-mile radius.³⁹

³² Robin R. Runge, *Article: Redefining Leave from Work*, 19 GEO. J. POVERTY L. & POL'Y 445, 448 (2012).

³³ Shannan Catalano, *Intimate Partner Violence, 1993-2010*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS (Sept. 29, 2015), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

³⁴ 29 U.S.C.S. § 2611 (2)(b)(ii).

³⁵ 29 U.S.C.S. § 2612 (d)(1); Robin R. Runge, *Article: Redefining Leave from Work*, 19 GEO. J. POVERTY LAW & POL'Y 445, 448(2012)(stating that the FMLA has been criticized for benefiting middle-and-upper income workers).

³⁶ 29 U.S.C.S. § 2612 (a)(1); Runge, *supra* note 32 at 453 stating that many single, low-income mothers are unable to afford unpaid leave).

³⁷ *Thomas v. Pearle Vision*, 251 F.3d 1132, 1137 (7th Cir. 2001) (finding that but for the employer's manual, an enforceable contract under Illinois law which allowed for an FMLA claim, the woman employee optometrist would not have been eligible for FMLA provisions).

³⁸ *Id.*

³⁹ *Id.*

Restrictions such as these cause many women, especially those in minority groups and lower educational levels, and who work for smaller scale employers, to sacrifice their financial and familial livelihoods.⁴⁰ Many women who cannot afford to lose their jobs may have to choose between their safety and their financial well-being.⁴¹ These choices should not have to be made and are in contrast with the FMLA's statutory purpose.⁴²

IV. Florida and Vermont: Model statutory expansions relating to Domestic Violence Leave and Leave for Routine Medical Visits

While Congress enacted the FMLA to protect families, provide work and economic stability, and prevent gender-based discrimination, the eligibility threshold requiring that an employer have 50 employees or more limited the statute's protections for over 40% of American employees.⁴³ Since its enactment, states including Maine, Minnesota, Oregon, Vermont, and the District of Columbia, have lowered the threshold and required employers with less than 50 employees to provide FMLA protections.⁴⁴

Other states, including California, Connecticut, Hawaii, Vermont, and New Jersey have expanded the FMLA's protections to cover additional family members, including: domestic partners, domestic partner's children,⁴⁵ civil union partners,⁴⁶ parent-in-laws,⁴⁷ stepparents,⁴⁸ and

⁴⁰ *Use of the FMLA, COVERAGE AND ELIGIBILITY OF LEAVE-TAKERS*, <http://www.dol.gov/whd/fmla/chapter3.pdf> (last visited on Mar. 25, 2017).

⁴¹ 29 U.S.C.S. § 2612(d)(1); *Gilbert v. Dept. of Corr.*, 696 So. 2d 416 (Fla. Dist. Ct. App. 1st Dist. 1997); *Hall v. Florida Unemployment Appeals Comm'n*, 697 So. 2d 541, 543 (Fla. Dist. Ct. App. 1st Dist. 1997); Runge, *supra* note 32 at 448 (stating that the FMLA has been criticized for benefiting middle-and-upper income workers).

⁴² 29 U.S.C.S. § 2601(b)(1); Marisa N. Goldberg, *Article: Bread and Roses: E.E.O.C. v. Bloomberg L.P. and the Case for a Work-Life Balance*, 9 AM. U. MODERN AM. 2, 6 (2013).

⁴³ National Partnership of Women & Families, *Family and Medical Leave Act, Celebrating 20 years of job-protected leave- and working to help even more families*, <http://www.nationalpartnership.org/issues/work-family/fmla.html> (last visited Nov. 30, 2016).

⁴⁴ 26 ME. Rev. Stat. Ann. §§ 843(3)(A)-(C) (2015); Minn. Stat. § 181.940 (Subd. 3) (2015); Or. Rev. Stat. § 659A.153(1) (2015); Vt. Stat. Ann. Tit. 21 § 471(4).

⁴⁵ Conn. Gen. Stat. § 31-51kk (7)(2015); *National Partnership for Women & Families, STATE FAMILY AND MEDICAL LEAVE LAWS THAT ARE MORE EXPANSIVE THAN THE FEDERAL FMLA*, <http://www.nationalpartnership.org/research-library/work-family/fmla/state-family-leave-laws.pdf>.

⁴⁶ Vt. Stat. Ann. Tit. 21 § 472(a)(2) (2015).

grandparents.⁴⁹ Moreover, other states have extended the ways in which individuals be provided FMLA leave, including: allowing a parent to attend a child's school or educational activities,⁵⁰ allowing an employee to take leave for medical visits for his or her family members,⁵¹ and protecting employees who have been the victims of domestic violence, stalking, or sexual assault.⁵² This paper will focus on Florida and Vermont's expansions and discuss how these provisions, if added to the FMLA, could provide employees with improved family and workplace balance, in alignment with the FMLA's purpose.⁵³

A. Florida: Providing inclusive protections for the needs of domestic violence victims and their families

State legislatures began to add domestic and sexual violence leave statutes to the FMLA regulations under the pretext that domestic and sexual violence were not only harmful to the home, but also harmful to the workplace.⁵⁴ These statutes also offered victims of domestic violence with additional support to deal with the psychological, emotional, and physical consequences that could arise from unsafe home environments. For the first time, state governments recognized that an individual's personal life could not always be compartmentalized from his or her work life.⁵⁵

Currently, these statutes offer educational and informational resources for domestic and sexual violence victims to find help and resources when they need it the most.⁵⁶ Some of the

⁴⁷ Conn. Gen. Stat. § 31-51kk(7); Or. Rev. Stat. § 659A.153(1).

⁴⁸ N.J. Rev. Stat. § 34-11B-(3)(h).

⁴⁹ Or. Rev. Stat. § 659A.150(4) (2015).

⁵⁰ Minn. Stat. § 181.9412 (2015); Vt. Stat. Ann. Tit. 21 § 472(a)(1) (2015).

⁵¹ Vt. Stat. Ann. Tit. 21 § 472(a)(2).

⁵² Fla. Stat. § 741.313.

⁵³ 29 U.S.C.S. § 2651(b).

⁵⁴ Fla. Stat. § 741.313.

⁵⁵ *Domestic Violence Workplace Policy, Statement of Purpose*, OFFICE OF THE MAINE ATTORNEY GENERAL, http://www.maine.gov/ag/about/domestic_violence_policy.html (last visited Dec. 22, 2016).

⁵⁶ *Id.*

states that have enacted these provisions, including Florida, allow employers to have discretion in granting an employee with reasonable and necessary leave from work. However, the employer has discretion to grant the leave with or without pay.⁵⁷

Domestic violence is a national issue that needs to be addressed at the federal level.⁵⁸ From 1994 to 2010, more women than men suffered at the hands of domestic violence, with 4 in 5 victims being women.⁵⁹ Black Non-Hispanic women and Hispanic women suffer more at the hands of domestic violence than white non-Hispanic women. Black non-Hispanic women comprise the largest majority of domestic violence victims (20.3 per 1000 cases) and Hispanic women comprise the second largest majority of victims (18.8 per 1000 cases).⁶⁰ According to the American Institute on Domestic Violence, domestic violence costs \$1.8 billion dollars a year in lost work productivity and 8 million dollars of paid work each year.⁶¹

Understanding that employers also suffer when domestic violence survivors are victimized, Florida enacted a statute to protect the rights of survivors in the work place.⁶² Specifically, Florida defines domestic violence to mean, “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”⁶³

The Governor of Florida began introducing statewide changes to workplace Domestic Violence policies in 1996 by issuing discretionary “Domestic Violence Workplace” policies to

⁵⁷ Fla. Stat. § 741.313 (2)(a).

⁵⁸ Shannan Catalano, *Intimate Partner Violence, 1993-2010*, <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

⁵⁹ *Id.* at 2

⁶⁰ *Id.* at 5.

⁶¹ *Id.*

⁶² Elissa Stone, *Comment: How the Family and Medical Leave Act Can Offer Protection to Domestic Violence Victims in the Workplace*, 44 U.S.F. L. REV. 729 (2010); American Institute on Domestic Violence, *Domestic Violence Spillover in the Workplace is Alarming Pervasive*, (Jan. 16, 2016).

⁶³ Fla. Stat. § 741.28.

state agencies.⁶⁴ These Domestic Violence Workplace policies could be implemented at the discretion of state agencies for any employees who were victims of domestic violence.⁶⁵ The Florida Department of Management Services would later issue a rule allowing agencies to approve job sharing to assist employees in meeting family needs, which could broadly be interpreted to include employee domestic violence protections.⁶⁶

The Florida Department of Children and Families and Miami-Dade County would also adopt similar approaches to domestic violence leave protections, with the Department of Children and Families allowing leave for reasons including court appearances, counseling, and relocation.⁶⁷ In 1999, Miami-Dade County adopted an ordinance allowing 30 days of unpaid leave for mental or dental care, as well as for legal assistance, counseling, or any services related to the domestic violence.⁶⁸ To be eligible, the employee needed to provide verification from a healthcare provider, attorney, clergy, or domestic violence counselor.⁶⁹ Further, the employee would also need to have already exhausted paid leave and personal vacation.⁷⁰

The Florida legislature officially enacted the workplace domestic violence at the state level on July 1, 2007, entitling employees up to 3 working days of leave or protection for any 12-month period.⁷¹ The statute allows an employee to take off from work to seek an injunction against domestic violence, to obtain medical help or counseling, to obtain support from a domestic violence victim's shelter, to make the employee's home secure, or to seek legal

⁶⁴ Senate Staff Analysis and Economic Impact Statement, *Judiciary Committee Notes* (Jan. 16, 2016), <http://archive.flsenate.gov/data/session/2006/Senate/bills/analysis/pdf/2006s0498.ju.pdf>.

⁶⁵ *Id.*

⁶⁶ State of Florida Department of Children and Families, *Policy on Domestic Violence* (Jan. 16, 2016), <http://www.dcf.state.fl.us/admin/publications/policies/060-11c1.pdf>.

⁶⁷ Committee Notes: <http://archive.flsenate.gov/data/session/2006/Senate/bills/analysis/pdf/2006s0498.ju.pdf>.

⁶⁸ Miami-Dade Cty, Fla Code §§ 11A-61-62(2015).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Fla. Stat. § 741.313 (2)(a).

assistance.⁷² The statute requires that the domestic violence victim inform his or her employer prior to taking leave unless he or she is in imminent danger, in accordance with the employer's work policy.⁷³

The provision also protects employees who have worked for 3 months or more at a job with an employer who employs 50 or more employees.⁷⁴ Under the statute, an employee must provide the employer with advance notice in accord with the employer's policy, with the employer having the ability to choose not to pay the employee for his or her leave.⁷⁵ If an employee claims he or she is a victim of domestic or sexual violence, he or she must provide sufficient documentation of the act at the discretion of the employer.⁷⁶

The Florida statute provides that an employer cannot retaliate against the employee for exercising his or her right under the statute, but may at some other time demote or terminate the employee for no reason as long as the demotion or termination is unrelated to the domestic or sexual violence leave of absence.⁷⁷ Should the employer fail to abide by the provision, an employee may be able to file a civil suit and recover damages or equitable relief in the form of wages and benefits that would have been due to the employee had the violation not occurred.⁷⁸ However, under the statute, an employee may not recover if the employer decided to not pay the employee for the leave from the onset.⁷⁹

While Florida courts have not specifically interpreted *Fla. Stat. § 741.313* in relation to temporary workplace leave, certain courts in Florida have ruled on domestic violence

⁷² Fla. Stat. § 741.313.

⁷³ Fla. Stat. § 741.313 (4)(a); John Sanchez, Article and Survey: 2006-2007 Survey of Florida. Public Employment Law, 32 NOVA L. REV. 141 (2007).

⁷⁴ Fla. Stat. § 741.313 (3).

⁷⁵ Fla. Stat. § 741.313 (2)(a); Fla. Stat. § 741.313 (4)(a).

⁷⁶ Fla. Stat. § 741.313 (4)(a).

⁷⁷ Fla. Stat. § 741.313 (5)(b).

⁷⁸ Fla. Stat. § 741.313 (6).

⁷⁹ *Id.*

absenteeism in the context of receiving unemployment compensation.⁸⁰ In *Gilbert v. Dpt. Of Corrections*, a woman correctional officer who had not yet completed her 1-year probation took 23 days off of unscheduled leave within one year.⁸¹ After her employer counseled her about her about her excessive absenteeism, she took off from work 6 more times.⁸² In one of these 6 instances, she took off for 2 weeks because of a back injury caused by her husband.⁸³ The employer terminated her the next month, and she filed for unemployment compensation.⁸⁴ The Unemployment Appeals Commission then found that she was ineligible.⁸⁵ On appeal, the Florida District Court reversed the finding on the basis that her absenteeism was not due to misconduct but because of domestic violence.⁸⁶

Conversely, the same Court, in *Hall v. Florida Unemployment Appeals Comm'n*, found a woman teacher to be ineligible for unemployment compensation when she voluntarily resigned, even though her ex-husband repeatedly threatened her life and safety.⁸⁷ The Court found that while the employee may have had a “good personal reason” to leave, the employer could not be held liable since it did not have control over the circumstances surrounding the leave or the danger posed by the claimant’s ex-husband.⁸⁸ In reaching this finding, the Court distinguished the case with others where the employer failed to remedy situations that occurred while on the

⁸⁰ *Gilbert v. Dept. of Corr.*, 696 So. 2d 416 (Fla. Dist. Ct. App. 1st Dist. 1997).

⁸¹ *Id.* at 418.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Hall v. Florida Unemployment Appeals Comm'n*, 697 So. 2d 541, 543 (Fla. Dist. Ct. App. 1st Dist. 1997).

⁸⁸ *Id.* at 544.

job.⁸⁹ Here, the court found that the employer did not have adequate control of the circumstances surrounding her leave.⁹⁰

Domestic violence may cause serious emotional, psychological, physical and even financial injury to an employee, precluding the employee from being able to perform his or her job functions effectively.⁹¹ In *Gilbert*, the woman officer took off a total of 2 weeks for a back injury and filed a formal restraining order.⁹² The Court in this case found, *in dicta*, that the domestic violence she experienced equated to an illness or injury qualifying her to receive unemployment insurance.⁹³ In *Gilbert*, however, the court found that there were no employment conditions she was unable to fulfill.⁹⁴

The rate of domestic violence has decreased since 1994, but domestic violence still affects a large number of employees, a majority of whom are women.⁹⁵ Studies estimate that 4 out of 5 women will be victims of domestic violence at some time.⁹⁶ While domestic violence is largely analyzed in the context of tort or criminal law, adding a provision to the FMLA addressing domestic violence in the workplace would be one way to improve the safety of employees nationally.

The Florida Domestic Violence Leave Statute permits a victim of domestic violence or sexual assault to take 3 days off from work to seek assistance.⁹⁷ Adding a similar provision to the FMLA would provide victims of domestic violence a guaranteed time frame in which to seek

⁸⁹ *Id.* (finding the employee eligible who was verbally and physically attacked at work).

⁹⁰ *Id.*

⁹¹ *Planned Parenthood v. Casey*, 505 U.S. 833,893 (1992); *Gilbert*, 696 So. 2d at 418; *Hall*, 697 So. 2d at 541.

⁹² *Gilbert*, 696 So. 2d at 418.

⁹³ *Id.*

⁹⁴ *Hall*, 697 So. 2d at 544.

⁹⁵ Shannan Catalano, *Intimate Partner Violence, 1993-2010*, U.S. Department of Justice, OFFICE OF JUSTICE PROGRAMS (Jan. 12, 2015), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.2.

⁹⁶ *Id.*

⁹⁷ Fla. Stat. § 741.313.

support and assistance, without substantially disrupting the workplace schedule. The Florida statute also allows for a victim to take off for reasons other than the physical impact of the trauma, as long the reason falls within the statute's guidelines and is in relation to the domestic violence suffered.⁹⁸

Victims of domestic violence suffer more than just physical harm. Many suffer from long-term effects of psychological abuse and financial instability, and an FMLA provision that addresses domestic violence at the workplace would improve the safety of employees. The first days after the abuse are a crucial time for a domestic violence victim to seek a protective order or to find a domestic violence shelter and inform someone.⁹⁹ During a 3-day time period, a victim of domestic violence would have time to seek a protective order, or time off to seek legal and psychological counsel.¹⁰⁰ Other domestic violence victims may have minimal physical harm, but would need the time to move their children to a domestic violence shelter while they find alternative housing.¹⁰¹ These instances could be protected nationally by amending the FMLA and adding a provision similar to the Florida Domestic Violence Leave Statute.

Victims of domestic violence need specific provisions that protect them from imminent danger. The Florida Domestic Violence Leave Statute requires that victims of domestic violence provide appropriate notice and sufficient documentation to their employers when seeking leave from work.¹⁰² This leave also depends on the employer's stated policy.¹⁰³ This provision may

⁹⁸ *Id.*

⁹⁹ *Questions About Leaving*, DOMESTIC VIOLENCE (Jan. 16, 2016), <http://www.domesticviolence.org/questions-about-leaving/>.

¹⁰⁰ *Frequently Asked Questions*, THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS (Jan. 16, 2016), <http://www.acog.org/~media/For%20Patients/faq083.pdf>.

¹⁰¹ *Questions About Leaving*, *supra* note 99.

¹⁰² Fla. Stat. § 741.313 (4)(a).

¹⁰³ *Id.*

protect the interests of the employer but it does not adequately protect the interests of the employee.¹⁰⁴

A victim of domestic violence may not be comfortable disclosing the exact details of the abuse to an employer. Statutes that require them to provide specific details put victims at the risk of embarrassment or shame. Instead of having to provide specific information, an employee should only have to provide broad details that put the employer on notice. A better approach would be to set a national standard requiring a letter from an attorney, doctor, or domestic violence counselor authenticating the date and time of the abuse, and provide a leave of pardon.¹⁰⁵

Allowing the employer to have sole discretion in determining how much information should be disclosed would create unjust results. Hypothetically, an employer could ask more information than needed to grant leave for a victim. For example, some information relating to the domestic violence issue might be found in an employee's health records, which would allow that an employer to know more information than would be relevant in the issue at hand. A better remedy would be for the employee's disclosure to be predetermined by the legislature. With a standardized law in place, employers would have to make more specific informational requests, which would protect the employee from invasive questions that could violate their health privacy rights. Further, having a standardized domestic violence disclosure statute would also meet the federal interest of providing uniformity and predictability in the law.¹⁰⁶

¹⁰⁴ *Planned Parenthood*, 505 U.S. at 892 (finding the nature of domestic violence discourages women from reporting it).

¹⁰⁵ Miami-Dade Cty. Fla Code §§ 11A-61-62.

¹⁰⁶ *Wilson v. Garcia*, 105 S. Ct. 1938, 1945 (U.S. 1985)(stating that the federal interests in uniformity, certainty, and the minimization of unnecessary litigation all support the conclusion that Congress favored this simple approach.)

Domestic Violence may cause excessive absenteeism in the workplace, producing unnecessary disruption in an employer's work environment.¹⁰⁷ The court in *Gilbert* found that an employee was entitled to worker's compensation despite the employee having been absent 23 days while she was on probation.¹⁰⁸ In Florida, a claimant must first prove that her employment has ended before qualifying for unemployment insurance.¹⁰⁹ For unemployment compensation cases, the employer has the burden of showing that the claimant voluntarily quit or was discharged due to the employee's misconduct connected with work.¹¹⁰

The Florida District Court found that despite the employee's actions, including her 23 absences, employee counseling, and extended unexcused 2 week leave, her leave did not constitute misconduct because it was caused by domestic violence.¹¹¹ Thus, courts may be more lenient in applying laws that are related to domestic violence, and having a standardized law would deter the unnecessary litigation costs that could arise because of employer and employee disputes. With a standardized law, both parties would be more aware of the explicit protections provided, leaving less room to resort to litigation.

Having a national statute that provides explicit protections to victims of domestic violence would deter employers from engaging in unnecessary litigation similar to *Gilbert*. Having a uniform policy increases the chance that an employer will be able to estimate, and at best anticipate, the financial costs of the workplace leave. An employer who can refer to a specific provision stating the number of days an employee may take leave for domestic violence would

¹⁰⁷ *Gilbert*, 696 So. 2d 416, 419 (Fla. Dist. Ct. App. 1st Dist. 1997 (J. Benton finding that the employee was eligible for unemployment compensation because her unauthorized absenteeism was the result of the domestic violence she experienced)); Deborah A. Widiss, *Article: Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 FLA. ST. U.L. REV. 669, 673 (2008).

¹⁰⁸ *Gilbert*, 696 So. 2d at 418.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Gulf County Sch. Bd. v. Wash.*, 567 So. 2d 420, 424 (Fla. 1990); *Gilbert*, 696 So. 2d at 419.

give the employer time and notice to remediate the costs and calculate the financial risk beforehand.

Adding a provision to the FMLA that compares with the Florida Domestic Leave Statute would also create a safe work haven for employees, as both employees and employers would be better prepared to deter domestic violence in the workplace.¹¹² In *Hall*, the court found that the employee did not have a reason for unemployment compensation, even when she stated that her ex-husband had threatened her life and safety.¹¹³ Adopting a provision similar to the Miami-Dade County ordinance protecting against *threats* of domestic violence and assault, would allow potential victims to take leave until the threat has either subsided or been addressed to police authorities.¹¹⁴

Finally, domestic violence is not merely a private issue to be remedied at the home, but an issue that needs to be addressed and analyzed in the context of the workplace.¹¹⁵ Domestic violence still affects a large number of employees today, and a majority of them are women.¹¹⁶ Studies estimate that 4 out of 5 women will be victims of domestic violence at some time, requiring them to take off from work because of the physical, psychological, emotional, and financial harm that they may suffer as a result of these crimes.¹¹⁷ While Domestic Violence is largely analyzed in the context of tort or criminal law, adding a provision to the FMLA that addresses Domestic violence in the workplace is one way to improve the safety of the workplace.

¹¹² Elissa Stone, *Comment: How the Family and Medical Leave Act Can Offer Protection to Domestic Violence Victims in the Workplace*, 44 U.S.F. L. REV. 729 (2010); American Institute on Domestic Violence, *Domestic Violence Spillover in the Workplace is Alarming Pervasive* (Jan. 16, 2016), <http://www.aidv-usa.com/>

¹¹³ *Hall*, 697 So. 2d at 543.

¹¹⁴ Miami-Dade Cty, Fla Code §§ 11A-61-62.

¹¹⁵ Marcy L. Karin, *Article: Changing Federal Statutory Proposals to Address Domestic Violence at Work: Creating a Societal Response by Making Businesses a Part of the Solution*, 74 BROOKLYN L. REV. 377 (2009).

¹¹⁶ Fla. Stat. § 741.313 (2)(a).

¹¹⁷ Linda C. Neilson, *Additional Article: At Cliff's Edge: Judicial Dispute Resolution in Domestic Violence Cases*, 52 FAM. CT. REV. 529, 530 (2014).

This would align more closely with the legislative purpose of balancing the needs of the family with the needs of the workplace.¹¹⁸

B. Vermont: A Model for increased FMLA expansions in the area of preventative healthcare

In 1985, Congresswoman Patricia Schroeder of Colorado brought the first version of the Family and Medical Leave Act to the congressional forefront by addressing the increased roles of women in the workplace and roles of men in the home.¹¹⁹ By the Clinton administration in the 1990's, Congress emphasized the importance of fathers and mothers participating "in the childrearing and the care of family members who have serious health conditions." The legislation would protect parents from having to "choose" between the security of their jobs and their roles as parents.¹²⁰ Congress defined a "serious health condition" as any illness, injury, impairment or physical or mental condition that involved inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment by a health care provider in its definition.¹²¹

By 2015, the number of women in the workforce had already increased by over half, with 72% of mothers also participating.¹²² As the traditional roles of women continued to change, and women become more invested in the workforce, the responsibilities of home life also began to shift.¹²³ These changes required additional workplace leave protections.¹²⁴ States such as Vermont addressed these shifts by enacting provisions that sought to remediate the added labor

¹¹⁸ 29 U.S.C.S. §2601(b)(1).

¹¹⁹ Parental and Disability Leave Act of 1985, H.R. 2020, 99th Congress, 131 Cong. Rec. 8318(Apr. 17, 1985); Kirsten K. Davis, Article: Extending the Vision: An Empowerment Identity Approach to Work-Family Regulation as Applied to School Involvement Leave Statutes, 16 WM. & MARY J. OF WOMEN & L. 613, 625 (2010).

¹²⁰ 29 U.S.C. § 2601(a)(2)-(3).

¹²¹ 29 U.S.C. § 2611(11)(A)-(B).

¹²² *Labor Force Participation Rates*, DEPARTMENT OF LABOR, http://www.dol.gov/wb/stats/latest_annual_data.htm#labor (last visited Jan. 16, 2016).

¹²³ H.R. 2020, 99th Cong.(1985).

¹²⁴ *Id.*

responsibilities working families were facing.¹²⁵ In response, Vermont provided its own modified state version of the FMLA that that can serve as a model for the federal law today.¹²⁶

Currently, the FMLA only covers the serious medical conditions of employees and their family members.¹²⁷ However, many of the country's chronic conditions may cause employees to request leave for preventable "serious medical conditions."¹²⁸ The National Center for Chronic Disease and Prevention and Health Promotion (the "CDC") estimates that 75% of the nation's healthcare spending is related to preventable chronic health conditions.¹²⁶ If these preventable health care conditions are not addressed, individuals could face a decreased quality of life and health care costs could increase overall.¹²⁹

Healthcare prevention may take many forms, but can include an individual's ability to take part in healthy living, may require attending regular routine medical visits, and managing existing conditions.¹³⁰ The U.S. Department of Health & Human Services recommends routine screenings and links these screenings with lower mortality rates and longer life.¹³¹ The National Institute of Health recommends that children receive frequent routine medical visits during infancy, and annual medical visits after the age of 3 years old. The U.S. Department of Health and Human Services list specific preventative measures for both men and women.¹³² These include: screenings for breast cancer, prostate cancer, and even depression.¹³³

¹²⁵ See Vt. Stat. Ann. Tit. 21 § 472(a)(1).

¹²⁶ *Id.*

¹²⁷ 29 U.S.C. §2601(a).

¹²⁸ *The Power of Prevention: Chronic Disease...the public health challenge of the 21st century*, NATIONAL CENTER FOR CHRONIC DISEASE PREVENTION AND HEALTH PROMOTION, <http://www.cdc.gov/chronicdisease/pdf/2009-Power-of-Prevention.pdf> (last visited Jan. 16, 2016).

¹²⁹ See *id.*

¹³⁰ See *id.*

¹³¹ U.S. National Library of Medicine, *Well-child visits*, Medline Plus, <https://medlineplus.gov/ency/article/001928.htm> (last visited Jan. 16, 2016).

¹³² *Id.*

¹³³ See U.S. Department of Health & Human Services, *Screening and Testing*, AGENCY FOR HEALTHCARE RESEARCH AND QUALITY, <http://www.ahrq.gov/patients-consumers/prevention/screening/index.html> (last visited Jan. 16, 2016).

According to the FMLA, an individual with a serious health condition must be in inpatient care in a hospital, hospice, or residential facility and must be receiving continued treatment by a healthcare provider.¹³⁴ For an individual to qualify, he or she must provide adequate notice of foreseeable leave to his employer.¹³⁵ For unforeseeable circumstances, an employee would be required to follow the employer's leave and notice policy.¹³⁶ Further, when asserting an FMLA claim for a serious health condition, an employee must provide timely notice in accordance with the circumstances and provide enough information so the employer can make a reasonable determination.¹³⁷

Ordinary sicknesses such as the cold, flu, and stomach ailments, absent more serious diagnoses, will not amount to a serious health condition.¹³⁸ If a medical provider treats an employee 2 or more times, and the employee receives prescribed medicine, then he or she is considered to be receiving medical treatment for purposes of the FMLA.¹³⁹ If the employer wants to know more about the employee's condition to make a leave determination, the employer may request that the employee provide medical certification from a healthcare provider.¹⁴⁰ Additionally, the employer may request 2 or 3 medical opinions from the providers that the employer chooses.¹⁴¹

In response to such requirements, Vermont expanded its state provisions to account for routine medical visits.¹⁴² Specifically, Vermont's Parental and Family Leave statute provides that

¹³⁴ 29 U.S.C. § 2611 (11)(a)-(b).

¹³⁵ See 29 U.S.C. § 2612(e).

¹³⁶ See 29 C.F.R. 825.303.

¹³⁷ See 29 C.F.R. 825.303(a).

¹³⁸ *Wheeler v. Pioneer Developmental Servs.*, 349 F. Supp. 2d 158,166(D. Mass. 2004)(quoting from the opinion of the Secretary of the Department of Labor).

¹³⁹ *Id.* at 165-6.

¹⁴⁰ *Id.* at 168.

¹⁴¹ *Id.*

¹⁴² See 29 U.S.C. § 2612(e).

an employee may attend or accompany the employee's child, stepchild, foster child, or ward to routine medical or dental appointments.¹⁴³ It also provides that an employee may take leave to attend professional services related to the care and well-being of the employee's parent, spouse, or parent-in-law.¹⁴⁴

While there is not specific case law regarding this provision in Vermont's statute, analyzing how other courts have interpreted a serious health condition provides valuable insight. In *O'Brien v. One Call Concepts, Inc.*, a woman filed an FMLA claim against her employer after the employer terminated her due to absences relating to migraine and dental issues.¹⁴⁵ The woman worked for her employer over 13 years and accrued 15 absences in 1 year due to migraine and dental issues.¹⁴⁶ During the span of her employment, she received treatment for migraines on 2 occasions, and had spoken to doctors in the hallways of hospitals regarding her ongoing migraines.¹⁴⁷ During her employment, she described her dental visits as routine.¹⁴⁸ The District Court found that she did not have a serious health condition or a viable FMLA claim because she did not show that her 2 visits had surmounted to a serious medical condition.¹⁴⁹

In *Wheeler v. Pioneer Development Servs.*, a District Court found that a woman had a serious medical condition because she was unable to work 5 days, had visited the doctor twice, and had taken a prescribed antibiotic.¹⁵⁰ The employee had also requested to leave work early at the onset of her symptoms, but was denied by someone in a supervisory authority.¹⁵¹

¹⁴³ Vt. Stat. Ann. Tit. 21 § 472(a)(2).

¹⁴⁴ *Id.*

¹⁴⁵ *O'Brien v. One Call Concepts, Inc.*, No. 04-4496, 2005 U.S. Dist. LEXIS 39029, *4 (D. Minn. Dec. 27, 2005).

¹⁴⁶ *Id.* at *2-3.

¹⁴⁷ *Id.* at *3.

¹⁴⁸ *Id.* *10-1.

¹⁴⁹ *Id.* at 1*2.

¹⁵⁰ *Wheeler*, 349 F. Supp. 2d at 170.

¹⁵¹ *Id.* at 163.

On the contrary, in *Nansamba v. North Shore Med. Ctr., Inc.*, the court found that a woman who had gastrointestinal bleeding during work, and who was later diagnosed with a hemorrhoid, did not have a serious health condition under the FMLA.¹⁵² During work, the woman requested to leave early because she was working and felt faint, informing the employer that she had not completed her duties for the day.¹⁵³

The court found that her hemorrhoids did not rise to the level of a serious medical condition because she was not prescribed medicine during her colonoscopy, but only in preparation of the colonoscopy. The court also found that she needed to have received treatment 2 or more times during her period of incapacity to show a serious medical condition.¹⁵⁴ The court stated, *in dicta*, that because bleeding during work did not leave her incapacitated, that her bleeding did not constitute a serious health condition as defined by the FMLA.¹⁵⁵

When determining a serious health condition, courts look to the frequency of the illness, and do not account for routine medical issues. In *Nansamba*, a woman's gastrointestinal bleeding did not amount to a serious medical condition, despite her requiring a colonoscopy.¹⁵⁶ The court found that while the hemorrhoids incapacitated her, they did not incapacitate her to the extent that she could be considered to be receiving "continuing treatment" as required from the FMLA.¹⁵⁷ However, in *Wheeler*, the court found that a woman who had been unable to work 5 days, had visited the doctor twice, and who had taken a prescribed antibiotic had a serious

¹⁵² *Nansamba v. North Shore Med. Ctr., Inc.*, 2012 U.S. Dist. LEXIS 70417, 6 (D. Mass. May 21, 2012).

¹⁵³ *Id.*

¹⁵⁴ *Nansamba*, 2012 U.S. Dist. LEXIS 70417 at 14 (finding that the record indicated that the medication reported in *Nansamba*'s system for the colonoscopy and do not constitute a regimen of continuing treatment for the hemorrhoids).

¹⁵⁵ *Id.* at 9.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 9 (finding that the patient did not need three consecutive calendar days of medical treatment).

medical condition and had been eligible for FMLA benefits.¹⁵⁸ In both cases, the court looked to the frequency and span of time of the health condition.¹⁵⁹

Courts look to whether a doctor prescribed medicine to an employee when determining if an employee has a serious medical condition. While the court in *O'Brien* found that a woman who suffered constant migraines for 13 years and had dental issues did not have a serious medical condition, the court in *Wheeler* found that a woman who took an antibiotic for 5 days had.¹⁶⁰ Both cases show that courts may not only look at the specific frequency of a condition, but look to the amount of times that a person seeks treatment and if the person received a prescription from a doctor. Arguably, suffering from constant migraines can cause serious interruptions in an employee's concentration and ability to work; yet courts do not find that the FMLA provides for such instances. The FMLA's provisions should thus expand to cover routine issues that provide a designated amount of time that an employee can take leave.

The FMLA should expand its employee protections in accord with the increased responsibilities and familial duties that employees have undertaken since its enactment.¹⁶¹ Currently, more women are participating in the workforce.¹⁶² With both parents in the workforce, routine medical visits counted as a necessary expansion to the FMLA's provisions. Since the statute was first introduced to Congress, its underlying purpose has been to address the

¹⁵⁸ *Wheeler v. Pioneer Developmental Servs.*, 349 F. Supp. 2d 158, 170 (D. Mass. 2004).

¹⁵⁹ *Wheeler*, 349 F. Supp. 2d at 166) (stating that "after the initial three-day period of incapacity, the employee does not have to show that she could not perform any work at all, but only that she could not perform job functions of her own employer and continued to receive treatment for her illness"); *Nansamba*, 2012 U.S. Dist. LEXIS 70417 at 10 (finding that "the issue is not with the number of treatments she received but with the timing of those treatments relative to her incapacity").

¹⁶⁰ *O'Brien v. One Call Concepts, Inc.*, 2005 U.S. Dist. LEXIS 39029,4 (D. Minn. Dec. 27, 2005).

¹⁶¹ Liz Watson and Jennifer E. Swanberg, *Article: Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation*, 3 AM. U. LABOR & EMP. L.F. 380, 382 (2013) (stating that while in the 1970s two-thirds of married couples had one spouse at home, women are now co-breadwinners in over two-thirds of households, and represent nearly half of all American workers).

¹⁶² Department of Labor, Latest Annual Data, Labor Force Participation Rates (Jan. 16, 2016), http://www.dol.gov/wb/stats/latest_annual_data.htm#labor.

increase in women workers, and more specifically, the increase of mothers in the workplace.¹⁶³

With the increase of responsibilities, employees should be provided with a leave policy similar to that of Vermont, so that they do not have to wait until they receive a letter from a medical provider before they are allowed to take leave.¹⁶⁴

While the health community strongly encourages that even healthy children receive routine medical attention, the FMLA still does not provide for such day-to-day needs.¹⁶⁵ While some expect employers to account for these needs in their work policies, some will not change their policies unless they are required to do so. Without such protections, many employees have to request vacation time off to take their children to the doctor. Some may not be able to afford this option and forgo their parental responsibilities in the process.¹⁶⁶ Employers may even have the preconceived notion that employees must work through these issues during non-working hours. Thus, even though women are participating more than ever in the workforce and greatly contributing to the United States economy, the needs of the family are not being accounted for in comparison. With both parents at work, there may be no one to take a child to the doctor.

Further, attending routine medical visits decreases the likelihood of a condition becoming chronic.¹⁶⁷ In the long run, this could benefit the employer overall.¹⁶⁸ Expanding the FMLA to include preventative health care measures would financially help the employer reduce the costs

¹⁶³ H.R. 2020, 99th Congress, 131 Cong. Rec. 8318 (stating that Congress must foster employment policies that recognize the financial and nurturing responsibility of today's parents).

¹⁶⁴ *Nansamba*, 2012 U.S. Dist. LEXIS 70417 at 6 (where the court found that a woman's hemorrhoids were not considered a serious medical condition because she did not receive a prescription for her colonoscopy and because she went to the doctor less than two times, even though she was bleeding during work.)

¹⁶⁵ *Id.*

¹⁶⁶ Peggie R. Smith, *Article: Accommodating Routine Parental Obligations in an Era of Work-Family Conflict: Lessons from Religious Accommodations*, 2001 WIS. L. REV. 1443, 1444 (2001).

¹⁶⁷ *Id.*

¹⁶⁸ National Center for Chronic Disease Prevention and Health Promotion, *The Power of Prevention, Chronic Disease...the public health challenge of the 21st century* (Jan. 16, 2016), <http://www.cdc.gov/chronicdisease/pdf/2009-Power-of-Prevention.pdf>.

of unanticipated leave. While certain serious health conditions may be unexpected, health care providers find that attending routine medical visits can decrease the likelihood that chronic conditions occur in the first place.¹⁶⁹ A stronger workforce will benefit the employer and reduce the need for employees to take more long-term leave in the future.

Finally, expanding the FMLA to include a provision for routine medical visits would curtail the necessity of an employee to divulge private information at the employee's expense.¹⁷⁰ Currently, the FMLA requires that an employee provide enough information about his or her health condition at the request of the employer, with the employee having the obligation to answer the employer's questions.¹⁷¹ Adding a provision that grants an employee a designated amount of leave for routine visits would protect the employee from disclosing information he or she may not be uncomfortable with.

The FMLA's protections provide steps in the right direction, but do not fully or adequately address the changing roles of the family and the added responsibilities that women have taken in the workplace.¹⁷² 70% of mothers with children under the age of 18 are currently in the work force, many of who work full time.¹⁷³ As women work more, there is no one in the home to meet the daily healthcare needs of the children, and this may be especially the case for single mothers or fathers.¹⁷⁴ The FMLA should adopt a provision similar to the Vermont Parental and Family

¹⁶⁹ *Id.*

¹⁷⁰ 29 C.F.R. 825.303.

¹⁷¹ *Id.*

¹⁷² Liz Watson and Jennifer E. Swanberg, *Article: Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation*, 3 Am. U. Labor & Emp. L.F. 380, 392 (2013).

¹⁷³ Department of Labor, ANNUAL DATA CHART 11, https://www.dol.gov/wb/stats/latest_annual_data.htm#labor (last visited Mar. 26, 2017).

¹⁷⁴ Nancy J. King, *Article: The Family and Medical Leave Act: An Ethical Model for Human Resource Policies and Decisions*, 83 MARQ. L. REV. 321, 327 (1999).

Leave Statute, which provides a parent the ability to take leave for a child's routine medical and dental appointments in order to meet the needs of the family.¹⁷⁵

V. Conclusion

The FMLA developed in response to the proposed Parental and Medical Leave Act in the 1980's.¹⁷⁶ As both the FMLA and legislative history of the Parental and Disability Leave Act indicate, Congress intended for the statute to establish a national leave policy that provided leaves of absence for employees who had serious medical conditions or for the employee's family members who had serious medical conditions.¹⁷⁷ However, the increase in the number of women and working mothers in the work force has deepened the need for statutory reform at the federal level. As such, the FMLA's current basic protections are no longer balancing the needs of the family with the workplace in accordance with the legislation's purpose.

As women continue to work more hours, the protections for women in the workplace also needs to grow.¹⁷⁸ Enacting a federal domestic violence leave statute would be a step in the right direction. Additionally, as women work more, there are fewer adults in the household accounting for the daily needs of the home, including the needs of children who require routine medical visits annually. Expanding the FMLA's protections would further Congress's intention and also account for the needs of the developing workforce and families affected by their increased work hours.

¹⁷⁵ Vt. Stat. Ann. Tit. 21 §472a (2).

¹⁷⁶ Parental and Disability Leave Act of 1985, H.R. 2020, 99th Congress, 131 Cong. Rec. 8318 (April 17, 1985).

¹⁷⁷ Shannan Catalano, *Intimate Partner Violence, 1993-2010*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS (Sept. 29, 2015), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

¹⁷⁸ *Id.*